

§ 748.3

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U.S. Export Assistance Center, Bureau of Industry and Security, 160 W. Santa Clara Street, Suite 725, San Jose, CA 95113, Tel: (408) 998-8805 or (408) 998-8806, Fax: (408) 998-8677.

(b) For the convenience of foreign consignees and other foreign parties, certain BIS forms may be obtained at U.S. Embassies and Consulates throughout the world.

[61 FR 12812, Mar. 25, 1996, as amended at 69 FR 5690, Feb. 6, 2004; 70 FR 22249, Apr. 29, 2005; 72 FR 3945, Jan. 29, 2007; 73 FR 36, Jan. 2, 2008; 73 FR 49330, Aug. 21, 2008]

§ 748.3 Classification requests, advisory opinions, and encryption review requests.

(a) *Introduction.* You may ask BIS to provide you with the correct Export Control Classification Number down to the paragraph (or subparagraph) level, if appropriate. BIS will advise you whether or not your item is subject to the EAR and, if applicable, the appropriate ECCN. This type of request is commonly referred to as a “Classification Request”. If requested, for a given end-use, end-user, and/or destination, BIS will advise you whether a license is required, or likely to be granted, for a particular transaction. Note that these responses do not bind BIS to issuing a license in the future. This type of request, along with requests for guidance regarding other interpretations of the EAR are commonly referred to as “Advisory Opinions”. The encryption requirements in the EAR require that certain encryption items be reviewed by BIS in order for them to be eligible for export or reexport under License Exception ENC (see § 740.17 of the EAR) or to be released from “EI” controls (see § 742.15(b)(2) of the EAR). BIS makes its determination based on the submission of a review request prepared in accordance with the instructions in Supplement No. 6 to Part 742 of the EAR. A review of the questions provided in Supplement No. 5 to part 742 of the EAR may assist in determining whether you must submit an encryption review request (see paragraph (d) of this section) for your particular item.

(b) *Classification requests.* Submit classification requests in accordance with the procedures in § 748.1.

(1) Each Classification Request must be limited to six items. Exceptions may be granted by BIS on a case-by-case basis for several related items if the relationship between the items is satisfactorily substantiated in the request. Classification requests must be supported by any descriptive literature, brochures, precise technical specifications or papers that describe the items in sufficient technical detail to enable classification by BIS submitted as PDF files attached to the SNAP-R submission unless a paper submission is authorized pursuant to § 748.1 of the EAR.

(2) When submitting a classification request, you must complete Blocks 1 through 5, 14, 22(a), (b), (c), (d), and (i), 24, and 25 on the application. You must provide a recommended classification in Block 22(a) and explain the basis for your recommendation based on the technical parameters specified in the appropriate ECCN in Block 24. If you are unable to determine a recommended classification for your item, include an explanation in Block 24, identifying the ambiguities or deficiencies that precluded you from making a recommended classification.

(c) *Advisory Opinions.* Advisory opinion requests must be in writing and be submitted to the address listed in § 748.1(d)(2). Both your letter and envelope must be marked “Advisory Opinion.”

(1) Your letter must contain the following information if you are requesting guidance regarding interpretations of the EAR:

(i) The name, title, and telephone and facsimile numbers of the person to contact,

(ii) Your complete address comprised of street address, city, state, country, and postal code; and

(2) If you are requesting BIS to determine whether a license is required, or the licensing policy related to a particular end-use, end-user, and/or destination, in addition to the information required in § 748.3(c)(1) you must also include:

(i) All available information on the parties to the transaction and the proposed end-use or end-user,

(ii) The model number for each item, where appropriate,

(iii) The Export Control Classification Number, if known, for each item; and

(iv) Any descriptive literature, brochures, technical specifications or papers that describe the items in sufficient technical detail to enable BIS to verify the correct classification.

(3) Requests for Validated End-User authorization should be submitted in accordance with the provisions set forth in § 748.15 and Supplement Nos. 8 and 9 to this part.

(d) *Review requests for encryption items.* A Department of Commerce review of encryption items transferred from the U.S. Munitions List consistent with Executive Order 13026 of November 15, 1996 (3 CFR, 1996 Comp., p. 228) and pursuant to the Presidential Memorandum of that date may be required to determine eligibility under License Exception ENC or for release from “EI” controls. Refer to Supplement No. 5 to part 742 of the EAR for questions that provide initial guidance in determining whether you must submit an encryption review request for your item. Refer to Supplement No. 6 to part 742 of the EAR for a complete list of technical information that is required for encryption review requests. Refer also to § 742.15(b) of the EAR for instructions regarding mass market encryption commodities and software. Refer to § 740.17 of the EAR for the provisions of License Exception ENC.

[61 FR 12812, Mar. 25, 1996, as amended at 61 FR 68585, Dec. 30, 1996; 62 FR 25461, May 9, 1997; 65 FR 62609, Oct. 19, 2000; 67 FR 38868, June 6, 2002; 68 FR 35785, June 17, 2003; 70 FR 8249, Feb. 18, 2005; 72 FR 33659, June 19, 2007; 73 FR 49330, Aug. 21, 2008]

§ 748.4 Basic guidance related to applying for a license.

(a) *License applicant*—(1) *Export transactions.* Only a person in the United States may apply for a license to export items from the United States. The applicant must be the exporter, who is the U.S. principal party in interest with the authority to determine and control the sending of items out of the

United States, except for Encryption License Arrangements (ELA) (see § 750.7(d) of the EAR). See definition of “exporter” in part 772 of the EAR.

(2) *Routed export transactions.* The U.S. principal party in interest or the duly authorized U.S. agent of the foreign principal party in interest may apply for a license to export items from the United States. Prior to submitting an application, the agent that applies for a license on behalf of the foreign principal party in interest must obtain a power of attorney or other written authorization from the foreign principal party in interest. See § 758.3(b) and (d) of the EAR.

(3) *Reexport transactions.* The U.S. or foreign principal party in interest, or the duly authorized U.S. agent of the foreign principal party in interest, may apply for a license to reexport controlled items from one country to another. Prior to submitting an application, an agent that applies for a license on behalf of a foreign principal party in interest must obtain a power-of-attorney or other written authorization from the foreign principal party in interest, unless there is a preexisting relationship by ownership, control, position of responsibility or affiliation. See power-of-attorney requirements in paragraph (b)(2) of this section.

(b) *Disclosure of parties on license applications and the power of attorney*—(1) *Disclosure of parties.* License applicants must disclose the names and addresses of all parties to a transaction. When the applicant is the U.S. agent of the foreign principal party in interest, the applicant must disclose the fact of the agency relationship, and the name and address of the agent’s principal. If there is any doubt about which persons should be named as parties to the transaction, the applicant should disclose the names of all such persons and the functions to be performed by each in Block 24 of the application. Note that when the foreign principal party in interest is the ultimate consignee or end-user, the name and address need not be repeated in Block 24. See “Parties to the transaction” in § 748.5.

(2) *Power of attorney or other written authorization*—(i) *Requirement.* An agent must obtain a power of attorney or other written authorization from the